



COMMONWEALTH of VIRGINIA

GOVERNOR TERRY MCAULIFFE'S TASK FORCE ON
COMBATING CAMPUS SEXUAL VIOLENCE
CHAIR ATTORNEY GENERAL MARK HERRING

JANUARY 7, 2015, 3:00PM
HENRICO COUNTY TRAINING CENTER, ROOM 2032

RESPONSE SUBCOMMITTEE DRAFT MEETING MINUTES

(pending approval at the next Subcommittee meeting)

Members Present: Allen Groves, Peter Blake, Jean Cheek, Judy Castele, Dan Dusseau, Bill Grace, Daphne Reid, Ellen Plummer

Members Not Present: Raychel Whyte, Michael Maxey

Staff Present: Melissa McMenemy, Elizabeth Griffin

Meeting Summary

3:05pm Meeting called to order

Chair, Dr. Plummer welcomed everyone to the meeting and asked everyone to introduce themselves.

Dr. Plummer explained to the subcommittee members that she is adding an item to the agenda, the statement of the Law Enforcement Subcommittee regarding the Task Force to not taking a position on legislation.

3:08pm Motion to approve the November 19, 2015, meeting minutes by Bill Grace, Peter Blake seconded the motion, motion passed unanimously

3:08pm Motion to approve the December 15, 2015, meeting minutes by Allen Groves, Judy Castele seconded the motion, motion passed unanimously

3:09pm Student Conduct Hearings
Kay Heidbreder, Counsel for Virginia Tech

Ms. Heidbreder explained that student conduct reviews have been established by all universities. She also explained that all institutions are unique unto themselves. Some schools have one hearing process for all types of violations while other institutions have multiple boards/hearing processes for academic and behavior. For purposes of this meeting, Ms. Heidbreder is not discussing academic issues, she is discussing behavioral issues. Virginia Tech's student conduct code is designed to support institutions educational component, teach appropriate behavior, and create a system where academic success can occur. It is about the behavior of a student as a student. Student discipline is not a criminal process and does not have criminal penalties. Sanctions can follow students from one institution to another.

This can include violation of state, local, federal law that impacts the community of the college, for example when a student is arrested out of state for assaulting another student that attends the same college. This will give the school the ability to address the violation.

Members of the subcommittee asked questions regarding jurisdiction over matters when a student is in between academic years and not fully registered for the following year and if a student has been suspended and commits a violation off campus of the student conduct code. Allen Groves explained that UVA has amended their rules to say there is an expectation of an enrolled student returning in the fall, the school has jurisdiction. At Virginia Tech it is presumed that the student will return to school after the suspension, the school can assert jurisdiction. An example of this occurred in a stalking case where a student was suspended and was still stalking another student on campus and the institution asserted jurisdiction in this matter. Each institution is different in their process for re-admitting a suspended student. Some institutions will bring the student back at the end of the sanction other will have a formal review process.

Daphne Reid asked if records follow students if they enroll in another institution. Family Educational Rights and Privacy Act (FERPA) protects educational records. If a student decides to enroll in another institution, that institution can request the old institution's records prior to admission. Virginia institutions will not pick up students who have been suspended, community colleges will enroll the student and it is unknown how private institutions handle transfers. Institutions look at the total student picture for admission and can deny admission for bad behavior. Some institutions ask about prior criminal acts, convictions, arrests on their applications. Dean Groves asks about situations where students leave prior to adjudication of a matter and how can that situation be dealt with and noted on their student record. Ms. Heidbreder explained that Virginia Tech can adjudicate a matter in abstention after the institution has asked the student or former student to participate in the hearing.

Ms. Heidbreder discussed Dickson vs. Alabama Board of Education. This case was regarding six students who were expelled for lunch sit in. The United States Supreme Court said that schools cannot suspend or expel students without due process. Students must be given notice as to the charges and be provided an opportunity to be heard. The accused is given notice of the charges, who the witnesses are against the accused and provided an opportunity to be heard. Through the institution's hearing process, the evidence is presented in order for a decision to be made.

Elizabeth Griffin further explained that due process is an administrative proceeding with an educational purpose. Institutions must follow their own policies. The Office of Civil Rights (OCR) will look at an institution's policies and determine whether or not that institution is following their policies.

Subcommittee members raised questions regarding whether or not institutions should allow the accused and/or the victim to have an attorney and how much involvement those attorneys should have. It was explained to the subcommittee that standard court rules not apply, a lot of hearsay will be given. Some institutions have an appeals process and some do not. OCR guidelines say that if an attorney is allowed for the accused, both the complainant and accused may have an attorney. Both the accused and complainant may present evidence and both parties may appeal the decision. Both parties may appeal decisions involving employees as well. OCR guidelines preclude cross examination of the accused and complainant by each other. All questions should go through hearing officer. Dr. Plummer stressed the importance of case management and having a group who can assess the situation and determine what is in the best interest of the victim and the community. Institutions have threat assessment teams and those teams may be used to assess a situation.

Daphne Reid asked what happens if the complainant cannot afford an attorney when the accused has an attorney. Ms. Heidbreder explained that the complainant can bring in an advisor of their choice, including a member of the university staff. Dean Groves discussed that nationally this is a dialogue that is occurring. There are some individuals who are working to raise money for attorney resources for the complainant and

some institutions that have law schools may set up law clinics utilizing third year law students to assist the complainants.

Additional discussions included whether the lingering effects of sexual violence may create a hostile environment on campus even if the event occurred off campus. Institutions do not have the power to seize photos, computers, compel companies to provide user info, have search warrants, etc. off campus. Institutions handle sexual misconduct because OCR says they have to. Institutions are only looking at school status in these cases they are not looking at the criminal aspect. Double jeopardy does not apply for school sanctions and the criminal process. Peter Blake asked about repeat offenders and recidivism. If the accused is found responsible multiple times, the institution should look at harsher sanctions. In cases where anonymous reports are made accusing the same person, the institution can talk with the accused and let them know multiple complaints have been received regarding that individual. Some institutions have had multiple people, independently of each other, file a report naming the same person and the complainant has not wanted to follow through with the process. Institutions have gone back to the complainants and asked if they would go forward knowing someone else has come forward as well, and they have. Dr. Plummer reinforced the importance of case management and being able to hear from different departments regarding the same situation. Finally, at some institutions the complainant may be the person who is “prosecuting” the case at the hearing instead of the school being the “prosecutor” in sexual assault cases.

Dr. Plummer read the statement from the law enforcement subcommittee regarding proposed legislation.

Campus sexual violence is a serious, complex issue facing the Commonwealth and this Nation. As the Governor, Attorney General and General Assembly work to make our campuses as safe as possible, the Task Force urges that the responses to address campus sexual violence are coordinated, comprehensive, thoughtful and fair. The Task Force, comprised of experts from across the Commonwealth, is reviewing the efforts of others across the country to identify the best practices in preventing, reporting, investigating and prosecuting these crimes and in supporting victims. We plan to complete this review before proposing any new legislation or practices within our report to the Governor. More study and analysis of the work being done throughout the United States is necessary to have the most effective response for victims of sexual assault.

Dr. Plummer asked the committee if they are comfortable endorsing the statement. Daphne Reid moved to approve the use of the statement and Dan Dusseau seconded. Peter Blake requested additional discussion and Judy Castele expresses concern that the work the Task Force is doing will be overlooked. Dr. Plummer explained the statement is written to give a voice to the Task Force. At 4:35pm the subcommittee unanimously agreed to approve supporting the statement. Further discussion was held on Task Force members not taking a position on a specific bill as a Task Force member, as this may look as though the Task Force has taken a position on bill and voted on that position. However, taking a position an employee of an institution or agency or as an individual is fine.

Dr. Plummer proposed February 4, 2015 and March 4, 2015, as next the next two meeting dates, from 10:00am-2:00pm for both meetings. Locations for the meetings still need to be determined, however both meetings will be held in Richmond.

The subcommittee members are in agreement to move forward with the proposed action items that were discussed during the December 15, 2014, meeting. Dr. Plummer asks the members to split into teams of two to work on each of the six action items. Dr. Plummer requests a one page summary on each action item, with references, for the February 4, 2015, meeting. Dr. Plummer informs the members that she has agreed to write the Response Subcommittee portion of the final report for the Governor. The March meeting will be used to finalize some of the work and to look at the overall pieces and show the overall needs and recommendations.

The list of action items and the subcommittee members addressing those items are as follows:

- Trauma-informed response for survivors from the point a report is made through adjudication (Jean Cheek)
- Fair and equitable response to the accused (Daphne Reid)
 - Due Process
 - Interim measures
 - Should transcripts be flagged if the accused is found responsible? Should transcripts be flagged if the accused is charged with a violation?
- Collaboration (Judy Castele, Bill Grace)
 - Case management
 - Sharing information and resources between the institution, local advocacy groups, and crisis centers in specific cases
 - Statewide collaboration and sharing of resources between all institutions of higher education
- Training and education regarding reporting options and support services for survivors. Using technology, apps, and social media to raise awareness of how to respond when an incident occurs (Allen Groves, Peter Blake)
- Establishing standards or metrics for response services and staff (i.e. having a certain number of counselors or confidential aides based on student population and a ratio of law enforcement officers to students) (Dan Dusseau)
- Address and improve the gaps and collisions between federal mandates (OCR, VAWA, FERPA), Virginia law, local law and practices, and college and university policies for response. (Mike Maxey, Ellen Plummer)

A question was raised from the public on whether or not there will be an overarching policy that all schools must follow. Dean Groves explained the Task Force is looking at best practices that institutions should adopt. Best practices can be used by each institution and they may adapt them for their institution's specific needs.

Meeting adjourned 4:55pm